IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6486 of 1988

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRINCIPAL SHREE JIVKORE VANITA VISHRAM

Versus

SAVITA SAYMON PARMAR & ANR.

Appearance:

1. Special Civil Application No. 6486 of 1988

MR MB GANDHI for the Petitioner
MR PC MASTER for MR HB SHAH for Respondent No. 1
MR DIPEN DESAI, AGP for Respondent No. 2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 02/08/2004

ORAL JUDGEMENT

The petitioner challenges the judgment and order dated 19th May, 1988 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act') in Review Application No.370/1986.

The respondent No.1, a teacher in the primary school, filed Application No.370/1986 before the Controlling Authority under the Act and claimed gratuity under the Act. The said application came to be allowed by the judgment and order dated 19th May, 1988. The Controlling Authority was pleased to hold that the respondent No.1 was entitled to gratuity in the sum of Rs.18,671=10. Feeling aggrieved, the petitioner preferred Review Application No.36/1988 which came to be rejected. Feeling aggrieved, the petitioner - School has preferred the present petition.

The question whether the respondent No.1, a school teacher, can be said to be an 'employee' within the meaning of the Act was referred to the Full Bench under reference dated 17th July, 2001 (Coram: Kundan Singh, J.). Pursuant to the said Reference, the Hon'ble Bench (Coram: J.N.Bhatt, R.K.Abichandani and K.R.Vyas, JJ.), by order dated 5th March, 2004, was pleased to hold that, "...We have no option but to reiterate that the definitional clause [e] of Section 2 of the Act does not cover a class of teacher and, therefore, the Act is not attracted as held by the Full Bench in "Shantiben's case" [supra] and approved and upheld by the Hon'ble Apex Court." In view of the above decision the impugned order made by the Controlling Authority requires to be quashed and set aside.

In above view of the matter the present petition is allowed. The impugned order dated 19th May, 1988 made by the Controlling Authority in Application No.370/1986 (Annexure-'A' to the petition) is quashed and set aside. Rule is made absolute. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

/sakkaf